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Attorneys for Plaintiffs, JOSUE SOTO, GHAZI RASHID, MOHAMED ABDELFATTAH, On
 Behalf of All Aggrieved Employees, All Others Similarly Situated, and the General Public
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSUE SOTO, GHAZI RAHID, MOHAMED)	Case No. 08-CV-0033 L (AJB)
ABDELFATTAH, On Behalf of All Aggrieved)	
Employees, All Others Similarly Situated, and	)	<u>CLASS ACTION</u>
the General Public,)	
	)	PLAINTIFFS' NOTICE OF MOTION AND
Plaintiffs and	)	MOTION TO DISMISS FIRST AMENDED
Counterclaim Defendants,	)	THIRD PARTY COMPLAINT OF
vs.	)	DIAKON LOGISTICS (DELAWARE), INC.
DIAKON LOGISTICS (DELAWARE), INC., a	)	AGAINST SAYBE'S, LLC, ABDUL
foreign corporation;	)	TRUCKING, INC., AND RASHID
	)	TRUCKING, INC. PURSUANT TO FED. R.
Defendant and	)	CIV. P. 12(b)(6)
Counterclaimant,)	
and	)	Date: August 11, 2008
DOES 1 through 50, inclusive,	)	Time: 10:30 a.m.
Defendants.	)	Judge: Hon. M. James Lorenz
	)	Dept: 14
DIAKON LOGISTICS (DELAWARE) INC.,)	
Third-Party Plaintiff,	)	Original Complaint Filed: 12/5/2007
vs.)	
SAYBE'S, LLC, ABDUL TRUCKING, INC.,)	
and RASHID TRUCKING, INC.)	
Third-Party Defendants.)	

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 11, 2008 at 10:30 a.m., or as soon thereafter as
3 counsel may be heard in Courtroom 14 of the above-entitled Court, located at 880 Front Street, San
4 Diego, California, 92101, Plaintiffs/Third-Party Defendants Josue Soto, Ghazi Rashid and
5 Mohamed Abdelfattah will, and hereby do, move this Court to dismiss Third Party Plaintiff's First
6 Amended Third-Party Complaint for failure to state a claim upon which relief can be granted
7 pursuant to Federal Rule of Civil Procedure 12(b)(6).

8 This motion is based on this Notice of Motion and Motion, the accompanying
9 Memorandum of Points and Authorities, all matters in the Court's file, other matters of which this
10 Court may take judicial notice, and any other oral and documentary evidence and argument as may
11 be presented prior to, or at the hearing of, this motion.

12
13 DATED: June 13, 2008

ISSA J. MICHAEL

14 s/Issa J. Michael

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ABDELFATTAH and Third Party Defendants
SAYBE'S LLC, ABDUL TRUCKING, INC.
and RASHID TRUCKING, INC.

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